IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2023 OF 2007

Shri Vasudev Khocharmal Agarwal ...Petitioner
V/s.
State of Maharashtra & Ors. ...Respondents

Shri P.K. Dhakephalkar, Senior Counsel with Shri M.J. Jamdar for the Petitioner.
Shri P.S. Dani for Respondent No.3.
Shri P.I. Khemani, AGP for Respondent Nos.1 and 4.

CORAM : V.M. KANADE, J.

DATED : AUGUST 22, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2. The petitioner is challenging the proclamation of the sale of the immovable property dated 20th February, 2007 which was issued in the under Rule 107(11) of the Maharashtra Co-operative Societies Rules, 1961 read with Section 156 of the Maharahstra Co-operative Societies Act, 1960.

3. Brief facts are that the petitioner had borrowed certain amount from the respondent bank and since the said amount was not paid, a Recovery Certificate was

issued under Section 101 of the Maharashtra Co-operative Societies Act. The Recovery Certificate was challenged by the petitioner, however, the said order was confirmed by the Apex Court. Thereafter, the proclamation of sale was initially issued on 26th July, 2006, however, the said auction could not be held. Thereafter, a second proclamation of sale was issued on 14th December, 2006. That also could not be held and finally, a proclamation dated 20th February, 2007 was issued for the sale of the property belonging to the petitioner.

4. The learned Senior Counsel, Mr.Dhakephalkar appearing on behalf of the petitioner submitted that the market value of the property was more than two crores. It is submitted that in the first proclamation the upset price was fixed at Rs.2,19,99,000/-. In the subsequent proclamation also, same upset price was continued as mentioned in the proclamation of sale. He submits that however, on the basis of a new valuation report, in the third proclamation of sale dated 20th February, 2007, a upset price was reduced to Rs.1,72,39,000/-. He invited my attention to the valuation report and submitted that

the area of the plot was wrongly mentioned as 3500 sq.ft where in fact the area was more than 4,500 sq.ft. He submitted that there was no justifiable reason to reduce the upset price. The petitioner, accordingly, had raised his objection to the said report. However, his objection was overruled. His revision application was also dismissed and hence, the petitioner has filed this present petition.

5. Mr.Dhakephalkar, learned Senior Counsel appearing on behalf of the petitioner invited my attention to an advertisement which has been issued in a newspaper in which it is mentioned that the respondent bank has now been taken over by another bank. It is submitted that therefore, liberty may be given to the petitioner to negotiate with the new bank.

6. The learned Counsel for the respondent, on the other hand, invited my attention to provisions of 107(B) of the said Rules and submitted that the petitioners had alternate remedy of taking objection to the confirmation of sale before the competent authority.

7. In the present case, initially by order dated 23rd March, 2007, this Court (Coram: S.K. Shah, J.) was pleased to direct that the auction which was proposed to be held on 24th March, 2004 should be held as proposed and that the bids which were received should be kept in a sealed pack. Thereafter, this Court by order dated 10th July, 2007 keeping in view the objection raised by the petitioner herein and in view of earlier order passed by this Court and in order to ensure that the petitioner gets a good price for his property which was to be auctioned, directed that the auction should be held in the Court itself. The petitioner was also permitted to get any proposed purchaser.

8. The petitioner, however, chose to challenge this order which was passed by filing a SLP in the Apex Court. This fact was informed to this Court. By order dated 24th July, 2007, the earlier order was recalled. Thereafter, today I am informed that a SLP filed by the petitioner challenging the order passed by this Court

dated 10th July, 2007 has been dismissed in limine. So far as take over of respondent No.3 bank by Thane Janata Sahakari Bank, in my view, the said change would not affect the auction which has already been held pursuant to order passed by this Court dated 23rd March, 2007. In any event, the bank which has taken over respondent no.3, would step into the shoes of respondent no.3.

9. The only question which is required to be taken into consideration is whether the upset price which has been reduced in the third proclamation which was issued by the bank. It is an admitted position that there are no regulations or rules framed under the Act laying down the procedure of an holding an auction and no prayer has been made regarding the upset price which has to be fixed by holding the auction. On earlier occasions though the upset price was fixed at Rs.2,19,99,000/-, auction did not go through and therefore, it appears that the upset price has bene reduced to Rs.1,72,39,000/-. The Bank, in my view, is justified in reducing the upset price if it does not get a proper offer for the said property though more than one

opportunity was given to the petitioner to bring the proposed purchaser for the said property to enable to procure any such person. Even though an auction was to be held in the Court in his presence to secure his interest, the petitioner after the order was passed chose to challenge the said order. Thus, he was not happy with the order which was passed by this Court. There is much substance in the submission of the respondent. The petitioner can very well take objection to the confirmation of sale under Rule 107 subclause 14 of the said provision.

10. Even otherwise on 10th July, 2007, this Court had opened the bids which were kept in a sealed envelope and those bids were above 2 crores. In my view, it is a clear case that the petitioner fear and apprehension is allayed by the fact that the bids are above 2 crores and to that extent, the grievance of the petitioner is satisfactorily taken care of and under these circumstances, I do not see any reason to interfere with the proclamation of sale and/or the order passed in revision.

11. Writ Petition, accordingly, is dismissed.

12. At this stage, the petitioner seeks continuation of interim order. This request, however, is declined.

(V.M. KANADE, J.)